EXPANDING
OPPORTUNITIES
FOR
BROADCASTERS
COALITION

March 26, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the Expanding Opportunities for Broadcasters Coalition (the "Coalition") hereby submits these short Informal Comments regarding a significant obstacle to widespread broadcaster participation in the voluntary incentive auction - the Commission's proposal to manage the prices paid to broadcasters by "scoring" stations based on population coverage, opinions about the value of classes of stations, or other factors.[1]

[1] The Coalition is composed of broadcasters who are the licensees or hold rights to acquire more than 40 stations in the nation's largest, most spectrum-constrained markets. These broadcasters recognize the potential benefit that could come from a successful auction and are committed to working with the FCC to achieve that result. At the same time, these broadcasters are cognizant of the fact that there are alternatives to auction participation should the rules adopted by the Commission not allow them to realize the fair market value of their spectrum as repurposed for wireless broadband.

It is universally acknowledged that widespread broadcaster participation is the indispensible key to a successful auction.[2] The Commission's proposal to manage the prices paid to broadcasters by "scoring" stations is driving broadcasters away from the auction. And, the "scoring" plan is inconsistent with the Spectrum Act, which provides for the prices to be received by broadcasters to be determined by the market forces of the auction, not by FCC "scoring".[3]

Under the Statutory plan, the prices to broadcasters are to be determined by the interplay of: (1) the demand for spectrum by wireless carriers; (2) the bids of a participating station; and (3) the bids of other broadcasters. The only other factor relevant to the prices received by broadcasters is the spectrum preclusion effect of any station or, stated another way, how buying a particular station advances the Commission's mission of clearing spectrum for wireless.[4] If constructed properly, the Commission's repacking algorithm automatically will account for the preclusion effect of each station. Any additional "scoring" is totally unnecessary and severely contrary to the goal of attracting broadcaster participation in the auction.[5]

The Statutory auction plan does not contemplate any role for the opinions of FCC Staff regarding the value of individual stations or

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[2] *See, e.g.*, Comments of Prospective Reverse Auction Participant, Docket No. 12-268 at 2-3 (Jan. 25, 2013) ("the success of the spectrum auction depends on the FCC providing sufficient incentives [to broadcasters] who are open to relinquishing their spectrum under the right conditions"); Comments of Telecommunications Industry Association, Docket No. 12-268 at 6 (Jan. 25, 2013) ("If this first-ever incentive auction is to fulfill policymakers' hopes, it must begin by attracting a significant number of broadcasters intrigued by the prospect of monetizing some or all of their spectrum holdings."); Comments of United States Cellular Corp., Docket No. 12-268 at i (Jan. 25, 2013) ("The Commission also should pursue every reasonable opportunity to increase the amount of spectrum made available in all markets."); Comments of Verizon and Verizon Wireless, Docket No. 12-268 at 20 (Jan. 25, 2013) ("In order to achieve Congress's objective of promoting wireless broadband deployment by maximizing the amount of spectrum that will be made available for flexible use, the Commission must encourage broad participation by broadcasters."); Comments of Vision Communications, Docket No. 12-268 at 10 (Jan. 23, 2013) ("In order to provide nationwide spectrum to a forward auction bidder, the Commission will need to encourage broadcast bidders to participate in the reverse auction.").

[3] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6403(a)(1), 125 Stat. 156 (2012).

[4] *See* Comments of Expanding Opportunities for Broadcasters Coalition, Docket No. 12-268 at 19 (Jan. 23, 2013).

[5] *See* Reply Comments of Expanding Opportunities for Broadcasters Coalition, Docket No. 12-268 at 18-19 (Mar. 10, 2013)

classes of stations.[6] Stated another way, Congress did not pass a law providing for broadcasters to be paid prices determined by FCC Staff.

In addition, "scoring" based on a station's population coverage is arbitrary and does not serve as a reliable proxy for a station's value to the FCC's spectrum clearing efforts. Attached as Exhibit 1 is an analysis of two hypothetical stations – one in New York City that covers a large population and a second located in Tuckerton, New Jersey (on the fringe of the New York EA) with significantly less population coverage. An FCC scoring scheme based on population coverage would yield lower prices for the Tuckerton station. Under the oft-discussed proposal to "score" stations based on the number of POPs that they serve in the highest value BEA, the Tuckerton station would have a "score" of less than 10% of the New York City station. And, even if the Commission "scored" stations based on total POPs served, the Tuckerton station would have a "score" of only about 30% of the New York City station.

These "scores" grossly undervalue the significance of the Tuckerton station to the FCC's spectrum reallocation efforts. As demonstrated by Exhibit 2, the Tuckerton station, while potentially being scored at less than 10% of the value of the New York City station, would preclude the repacking of 257 existing television stations, or 88% of the 292 stations precluded by the New York City station. And this analysis does not account for other factors that increase the difficulty of repacking a "fringe" station. For instance, a "fringe" station located on its own tower is more likely to preclude the use of adjacent channels than co-located stations at the center of the market (i.e., Empire State Building in New York City or Mount Wilson in Los Angeles). Additionally, assuming that the FCC adopts its proposal to permit a *de minimis* amount of coverage area and population loss for repacked stations, a station such as Tuckerton, which has its highest population density located toward the edge of its protected contour, will prove more difficult to repack than a centrally located station, such as the New York City station, which has the majority of its viewers closer to the transmitter site.

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[6] *See* 158 Cong. Rec. H907-927 (daily ed. February 17, 2012) (statement of Rep. Greg Walden) ("The FCC should not be picking winners and losers. The market should.").

Scoring blindly by POPs also may lead to results that are antithetical to the Commission's auction goals. The Coalition provides one example below that illustrates a number of ways in which the scoring mechanism fails entirely:

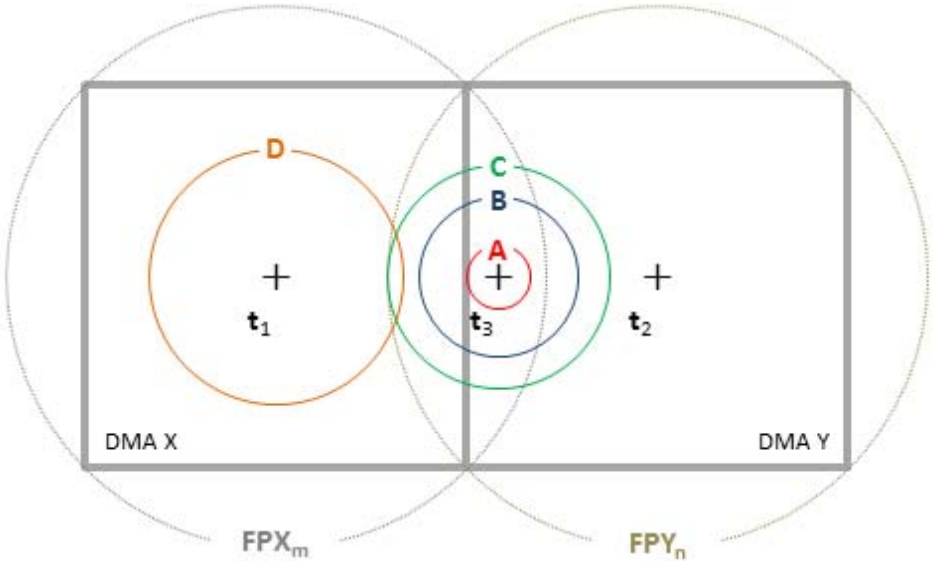

Figure 1: Example Valuation Problem

Assume there are two markets, DMA X and DMA Y, where most broadcasters are concentrated at three transmitter locations, t_1, t_2 and t_3. In both markets, there are a range of full power stations (FPX_m and FPY_n, respectively) with coverage of their entire respective DMAs—assume the FPX_m stations have coverage of 15M POPs each, and the FPY_n stations have coverage of 10M POPs each. Further assume that there are a set of stations A, B and C at location t3, and station D at t1, with respective coverage of 100K, 1M, 3M and 6M POPs each. Table 1 below summarizes the POP coverage and the preclusive effect of each station in the market:

		Preclusive Effect On:					
Station	POPs	FPX_m	FPY_n	A	B	C	D
FPX_m	15 M		Y	Y	Y	Y	Y
FPY_n	10 M	Y		Y	Y	Y	Y
A	0.1 M	Y	Y		Y	Y	N
B	1 M	Y	Y	Y		Y	N
C	3 M	Y	Y	Y	Y		Y
D	6 M	Y	Y	N	N	Y	

Thus, for example, Station B has a preclusive effect on Station C, but not on Station D. Given this example, the issues with scoring should be immediately evident:

- Station C, like FPX_m and FPY_n, precludes all other stations in both markets, and therefore is of similar value to FPX_m and FPY_n. However, POPs-based scoring would value C at only 20% of the FPX_m stations.

- Station D is compatible with both Stations A and B, and therefore is less valuable than Station C. However, simply based on POP counts, Station D would have a value that is twice that of C.

- Stations A and B both preclude Stations C, FPX_m and FPY_n, and therefore are of similar value. However, Station A has a score that is only 10% of Station B.

This example demonstrates that there are numerous anomalous results from scoring simply based on population. While the example provided is hypothetical, the relative population coverage of stations in this type of configuration are entirely plausible, and these types of situations are quite likely to arise.

It is clear, then, any effort to "score" stations based on POPs served could arbitrarily devalue stations that are critical to the FCC's ability to reallocate spectrum in some of the largest, most spectrum-constrained markets. If the Commission offers a station with less population coverage a lower value, it could cause that station to forego auction participation, notwithstanding the fact that the station will greatly hinder the agency's repacking efforts. Already, the prospect of such scoring is causing some stations to rethink their plans to participate in the auction.

Unfortunately, the Commission's "scoring" proposal fits into a pattern of other counterproductive ideas to reduce payments to broadcasters. For example, at the recent Stanford Conference organized with the help of the FCC, one economist declared UHF stations "worthless," the same economist called on the FCC to demand Nielsen ratings from stations (even though those ratings have absolutely nothing to do with the value of 6 MHz for wireless broadband), and another economist urged the Commission to utilize "strong arm" tactics similar to government efforts to involuntarily seize private electric utility assets. One speaker urged that Class A stations should receive only an arbitrary 20% of the prices received by full power stations and another speaker put the figure at 25%.[7] It would be easier for broadcasters to disregard these statements if they did not fit so well with the Commission's own "scoring" proposal.

Recently, the Chairman of the House Subcommittee on Communications and Technology warned the FCC that it was in danger of a failed auction because, *inter alia*, it was sending the wrong signals to broadcasters.[8] The leadership of the Commission seems to understand. At a recent Senate hearing Chairman Genachowski emphasized, "We are committed to ensuring healthy financial incentives for broadcasters to facilitate their participation."[9] At the same hearing Commissioner Pai observed "[I]f the Commission preemptively tells broadcasters, 'You may bid this high, but no higher,' many may not show up for the reverse auction."[10] The Coalition is very grateful for these extremely important and positive statements by Commission leadership. But, they stand in sharp contrast to the message coming from some other parts of the Commission that broadcasters need to "temper" their price expectations.

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[7] By contrast, out in the real world, a report from SNL Kagan recently noted "the disappearance of a valuation discount for class A stations compared to full-power properties." *See* Robin Flynn, *Latest Spectrum-Related TV Station Deals Yield Higher Value Benchmarks*, SNL Kagan: Broadcast Investor (Feb. 25, 2013).

[8] *See* Statement of Rep. Greg Walden, Chairman, House Subcommittee on Communications and Technology, *Keeping the Incentive in Incentive Auctions* (Mar. 13, 2013), *available at* http://energycommerce.house.gov/brand/keeping-incentive-incentive-auctions.

[9] *Oversight of the Federal Communications Commission*, *Hearing Before S. Comm. on Commerce, Science, and Transp.* (Mar. 12, 2013) (prepared statement of Julius Genachowski, Chairman, FCC).

[10] *Oversight of the Federal Communications Commission*, *Hearing Before S. Comm. on Commerce, Science, and Transp.* (Mar. 12, 2013) (prepared statement of Ajit Pai, Commissioner, FCC).

The absolute best way for the Commission to assure a successful auction, and to assure that there will be funds for FirstNet and deficit reduction, is to attract the maximum possible broadcaster participation. We urge the Commission to take every opportunity to disavow any intention to manage broadcaster prices by "scoring" stations.

Respectfully Yours,

/s/ Preston Padden /s/

Preston Padden
Executive Director
Expanding Opportunities for Broadcasters Coalition

EXHIBIT 1

Repacking Comparison, New York City v. Tuckerton, NJ

Assumes equivalent facility in each location with parameters (37O kW, 390 m. HAAT) based on the average for New York City. 41 dBu F(50,90) contour calculated at 95 km based on FCC Propagation Calculator for UHF TV. Interference contour based on providing 17 dB of protection, so calculated as 24 dBu F(50,10) field strength (300 km) using UHF curves. POP coverage based on 2010 Census Block counts for all centroids in 41 dBu contour.

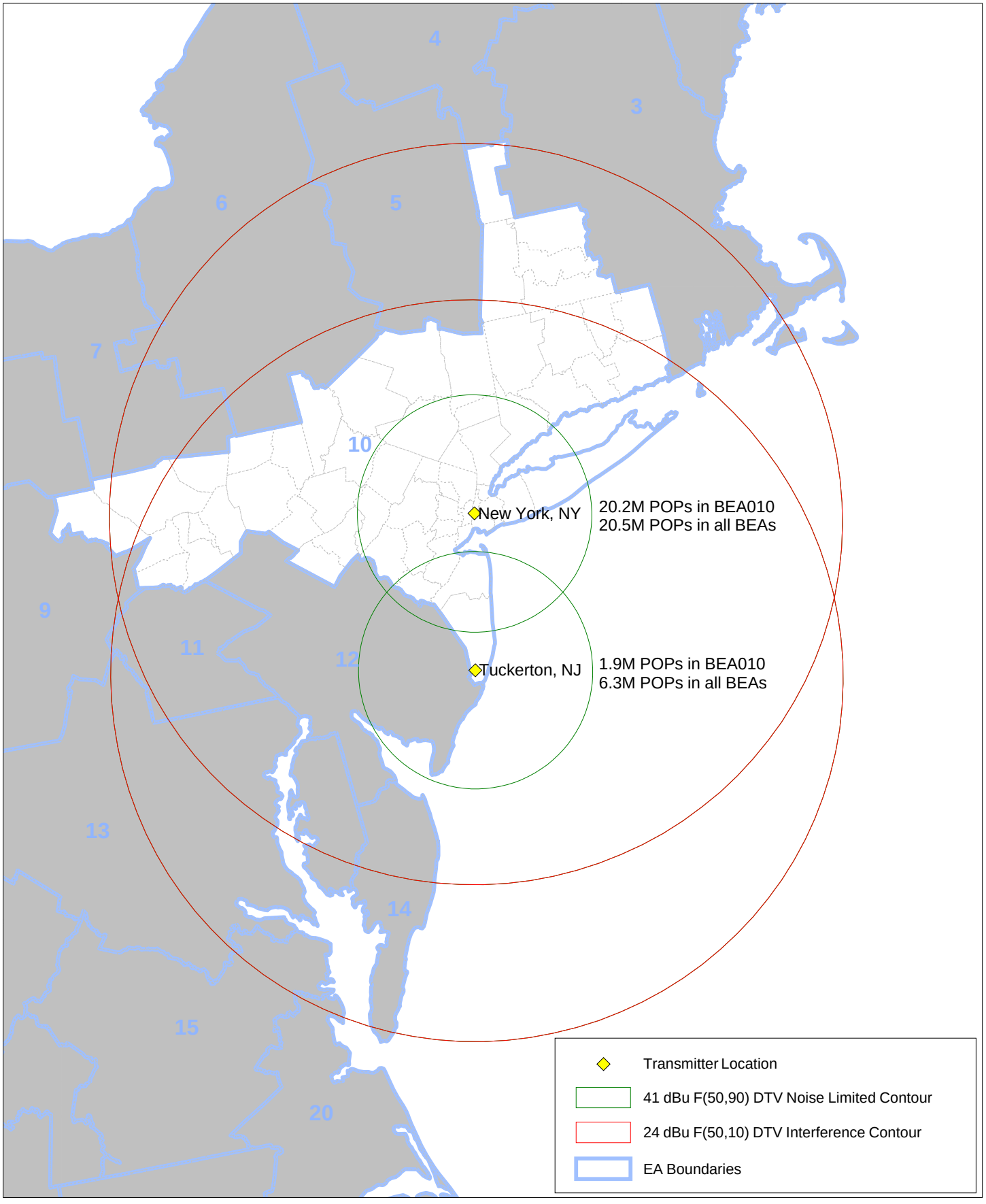

EXHIBIT 2

Repacking Comparison, New York City v. Tuckerton, NJ

41 dBu F(50,90) contour data from FCC as of 2/12. Study uses contour associated with latest filed application for each station.